

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

KENNETH CUNNINGHAM,

Plaintiff,

v.

**PRAIRIE FARMS DAIRY, INC. and
EAST SIDE JERSEY DAIRY, INC.,**

Defendants.

)
)
) **Case No.: 2:19-cv-1022**
)
)

) Removal from Iowa District Court
) for Dubuque County
) Case No. LACV 109456
)

) **JURY TRIAL DEMANDED**
)
)

DEFENDANTS' JOINT NOTICE OF REMOVAL

Defendants Prairie Farms Dairy, Inc. and East Side Jersey Dairy, Inc. ("Defendants") submit this Notice of Removal pursuant to 28 U.S.C. §§ 1441(a), 1446(a), and 1331.

TIMELINESS OF REMOVAL

1. Plaintiff Kenneth Cunningham ("Plaintiff") filed his Petition in the Iowa District Court for Dubuque County on July 10, 2019. Pursuant to Local Rule 81(a)(1), copies of all process, pleadings, and orders filed in the state case are attached as **Exhibit A**.
2. Defendants were served with notice of this lawsuit on or after August 15, 2016.
3. Defendants deny the allegations and damages claimed in the Petition and file this Notice of Removal without waiving any defenses, exception, or obligations that may exist in its favor in either federal or state court.
4. Removal of this action is timely because Defendants are filing their Notice of Removal within thirty days after service of a copy of Plaintiff's Petition in accordance with 28 U.S.C. § 1446(b).

VENUE

5. Venue is proper in this district under 28 U.S.C. § 1441(a) and 28 U.S.C. § 1446(a) because the state court in which the action is pending is located in this district. *See* 28 U.S.C. § 95(a)(2).

BASIS FOR REMOVAL JURISDICTION

6. In Plaintiff's State Action, Plaintiff alleges Defendants' violation of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 – 12300 (West 2019) against himself by interfering with his exercise of his ADA rights and by terminating his employment in retaliation for his exercising his ADA rights. Petition at ¶¶ 1, 56-60.

7. In addition, Plaintiff's claims pursuant to state law turn on substantial questions of federal law, in that the basis of his wrongful discharge and retaliation claims turn on whether Defendants failed to reasonably accommodate Plaintiff's disability, terminated Plaintiff based on his disability, and retaliated against Plaintiff for his request for reasonable accommodation by terminating his employment.

8. Defendants remove Plaintiff's State Action pursuant to this Court's federal question and ADA jurisdiction, 28 U.S.C. §§ 1331, 1441, and 42 U.S.C. § 12117, and its supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a). This Court has jurisdiction over the parties and the subject matter of the Plaintiff's State Action.

NOTICE TO STATE COURT AND PLAINTIFF

9. Defendants will promptly file a copy of this Notice of Removal with the clerk of the Iowa District Court for Dubuque County where the action is currently pending.

10. A copy of the notice to Plaintiff's counsel of the filing of Notice of Removal will be filed promptly with the Clerk of this Court under separate cover.

11. A copy of the Civil Cover Sheet is attached to this Notice as **Exhibit B**.
 12. Defendants' removal and filing of Notice of Removal do not constitute a waiver of any defenses that may be available to Defendants.
 13. For these reasons, Defendants hereby remove this action to this Federal Court.
- JURY TRIAL DEMANDED**
14. Defendants demand a jury trial on all issues triable of right by a jury pursuant to Federal Rules of Civil Procedure 81(c) and 38.

Respectfully submitted,

/s/ Julie T. Bittner

Kerrie M. Murphy, AT0005576

Julie T. Bittner, AT0009719

Logan Kraus, AT0013433

MWH LAW GROUP LLP

1501 42nd Street, Suite 465

West Des Moines, IA 50266-1090

Telephone: (515) 453-8509

Facsimile: (515) 267-1408

E-mail: kerrie.murphy@mwhlawgroup.com

E-mail: julie.bittner@mwhlawgroup.com

E-mail: logan.kraus@mwhlawgroup.com

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2019, I electronically filed the foregoing with the Clerk of the Court using the ECF system which will send notification of such filing to all attorneys of record.

/s/ Brooke E. Klingbeil

I further certify that on August 30, 2019, I mailed a copy of the foregoing to opposing counsel at the address listed below:

Zeke R. McCartney
Reynolds & Kenline, L.L.P.
110 East 9th Street
P.O. Box 239
Dubuque, IA 52004-0239
mccartney@rkenline.com
Attorney for Plaintiff

/s/ Brooke E. Klingbeil